

CONSTRUCTION CONTRACT

THIS AGREEMENT, made and entered into this 15 day of August, 2024, between the CITY OF McCLEARY, hereinafter called Owner, under and by virtue of the charter, laws and ordinances of the said Owner and the laws of the State of Washington, and Freedom Heating & A/C hereinafter called Contractor.

WITNESSETH:

That in consideration of the payment, covenants and agreement hereinafter mentioned, attached and made a part of this Agreement, to be made and performed by the parties hereto, the parties covenant and agree as follows regarding:

Replacement of wastewater treatment plant HVAC system including like equipment, disposal, connections, start-up and testing. One-year parts and labor warranty included. Please see attached scope of work and cost estimate for additional details (exhibit A)

1. The Contractor shall do all work and furnish all tools, materials and equipment in accordance with and as described in the attached Exhibit A and in full compliance with the terms, conditions and stipulations herein set forth and attached, now referred to and by such reference incorporated herein and made a part hereof as fully for all purposes as if here set forth at length, and shall perform any alterations in or in addition to the work covered by this Contract and every part thereof and any force account work which may be ordered as provided in the Contract and every part thereof.

The Contractor shall provide and bear the expense of all materials, labor, equipment, tools, implements and conveniences and things of every description that may be requisite for the transfer of materials and for constructing and completing the work provided for in this Contract and every part thereof, except such as are mentioned in the Specifications to be furnished by the Owner.

~~The Contractor shall comply with the General Requirements as described in the attached Section D, which include General Special Provisions (GSPs) from various sources, which may have project-specific fill ins, and project-specific Special Provisions.~~

NA
GSP

2. The Owner hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above-described work and to complete and finish the same according to the attached Exhibits A and product specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this Contract and every part thereof.
3. Contractor, for himself and for his heirs, executors, administrators, successors, assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of Contractor.
4. It is further provided that no liability shall attach to Owner or Agent thereof by reason of entering into this Contract, except as expressly provided herein.

5. Payments will be made under the Contract according to the schedule of rates and prices and the specification attached and made a part thereof. Partial payments under the Contract will be made at the request of the Contractor not more than once each month upon approval of the Owner, as hereinafter specified, provided they are in accordance with the provisions of RCW 60.28.010. There will be reserved and retained from monies earned by the Contractor, as determined by such monthly estimates, a sum equal to 5 percent of the Contract price.

Payment of the retained percentage shall be withheld for a period of forty-five (45) days following the final acceptance of the work and materials by the Owner, and shall be paid the Contractor at the expiration of said forty-five (45) days in event no claims, as provided by law, have been filed against such funds; and provided further, that releases have been obtained from all departments and agencies having jurisdiction over the activities of the Contractor. In the event such claims are filed, Contractor shall be paid such retained percentages less an amount sufficient to pay any such claims together with a sum sufficient to pay the cost of such action, and to cover attorney fees as determined by the Owner.

6. The Contractor agrees to release, indemnify, defend, and hold the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers harmless from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, taxes, losses, fines, fees, penalties expenses, attorneys' fee, costs, and/or litigation expenses to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives; arising from, resulting from, or in connection with this Agreement or the acts, errors, or omissions of the Contractor in performance of this Agreement, except for that portion of the claims caused by the City's sole negligence. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. Contractor shall ensure that each subcontractor shall agree to defend and indemnify the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph. The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants or indemnification.

7. Requests for review of substitute items of material or equipment will not be accepted by the Owner or Agent from anyone other than the Contractor. If the Contractor wishes to furnish a substitute item, the Contractor shall make written application to the Owner's Agent for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, which shall be considered by the Owner in evaluating the proposed substitute. The Owner may require the Contractor to furnish at the Contractor's expense, additional data about the proposed substitute. The Owner will be the sole judge of acceptability, and no substitute will be ordered without the Owner's prior written acceptance. The

Owner may require the Contractor to furnish at the Contractor's expense, a special performance guarantee or other surety with respect to any other substitute.

The Owner or Agent will record the time and expenses in evaluating substitutions proposed by the Contractor. Whether or not the Owner accepts a proposed substitute, the Contractor shall reimburse the Owner for the costs of evaluating any proposed substitute.

8. The Owner reserves the right, after the final payment has been made, to claim and recover by process of law such sums as may be sufficient to make good any defects in the equipment or to recover any over-payment resulting from dishonest acts of the Contractor.
9. The contract time will commence to run, and the Contractor shall start to perform his obligation under the contract documents, on the day indicated in the Notice to Proceed given by Owner to Contractor; but in no event shall contract time commence to run later than the 30th calendar day after the date when both Owner and Contractor execute the Contract. A Notice to Proceed may be given at any time within thirty (30) calendar days after the date when both Owner and Contractor execute the Contract.
10. The Contractor shall guarantee the materials and workmanship for a period of one (1) year from and after the date of final acceptance by the Owner.

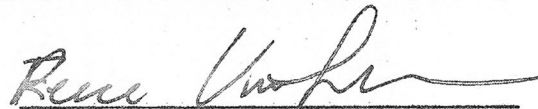
If, within said guarantee period, repairs are required which, in the opinion of the Owner, are rendered necessary as a result of work or materials which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner, (a) correct all defects and place in satisfactory condition in every particular all of such guaranteed work and materials; (b) make good all damage which in the opinion of the Owner is caused by such defects; and (c) make good any other work or material or the equipment and contents of a building, structure or site disturbed in fulfilling any such guarantee.

If the Contractor, after notice, fails within ten (10) days to proceed to comply to the terms of this guarantee, the Owner may have the defects corrected, and the Contractor and his Surety shall be liable for all expense incurred, provided, however, that in case of an emergency where, in the opinion of the Owner, delay would cause serious loss or damage, repairs may be made without notice being given to the Contractor and the Contractor shall pay the cost thereof.

11. Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any notices required to be given by the Parties shall be delivered at the addresses set forth at the beginning of this Agreement. Any notices may be delivered personally to the addresses of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option

conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. This Agreement shall be made in, governed by, and interpreted in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from this Agreement, the exclusive means of resolving that dispute, difference, or claim shall be by filing suit under the venue, rules, and jurisdiction of the Grays Harbor County Superior Court, Grays Harbor County, Washington, unless the parties agree in writing to an alternative process. If the Grays Harbor County Superior Court does not have jurisdiction over such a suit, then suit may be filed in any other appropriate court in Grays Harbor County, Washington. Each party consents to the personal jurisdiction of the state and federal courts in Grays Harbor County, Washington, and waives any objection that such courts are an inconvenient forum. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorneys' fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the Parties' rights to indemnification under Section 5 of this Agreement.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the City Mayor caused this instrument to be executed in the name of the City of McCleary the day and year first above-written.


Contractor
Freedom Heating & A/C 8/15/2024

Chris Miller, City of McCleary Mayor

ATTEST:

By Jenna Amsbury, Clerk-Treasurer

APPROVED AS TO FORM:

By On File
Christopher John Coker, City Attorney

EXHIBIT A

ESTIMATE

FREEDOM HEATING AND A/C
P.O. Box 1447
McCleary, WA 98557

freedomheating25@gmail.com
+1 (360) 470-2888
www.freedomheatingac.com



Bill to
City of McCleary
C/o Joe P

Ship to
City of McCleary
C/o Joe P

Estimate details

Estimate no.: 3068
Estimate date: 07/19/2024

#	Date	Product or service	Description	Qty	Rate	Amount
1.		Install	Replacement of waste water treatment plant HVAC system to include: -Removal and disposal of old unit -install Like for like American standard 3ton heat pump unit -Make all connections -Start up and test -1 year part and 1year labor warranty	1	\$14,800.00	\$14,800.00

Subtotal \$14,800.00

Sales tax (10.30%) ~~\$1,524.40~~
8.9% 1,317.20

Total **\$16,324.40**

16,117.20

Note to customer

Thank you for your business.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Duncan & Associates Insurance Brokers P.O. Box 1458 - 2111 Harrison Ave NW Olympia, WA 98502	CONTACT NAME: Nancy Wagner	
	PHONE (A/C, No, Ext): 360-352-7588	FAX (A/C, No): 360-943-6304
	E-MAIL ADDRESS: Nancy@Duncanins.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: West American Insurance Company	NAIC # 23822
INSURED Freedom Heating & AC LLC PO Box 1447 McCleary, WA 98557	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

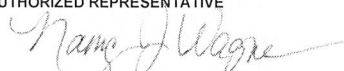
COVERAGES CERTIFICATE NUMBER: 00091152-948763 REVISION NUMBER: 22

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	BKW53348646	05/01/2024	05/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of McCleary is named additional insured with primary noncontributory status per form 88 10 04 13.

CERTIFICATE HOLDER	CANCELLATION
City of McCleary 100 S 3rd St McCleary, WA 98557	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (NJW)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:
 - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance.**

2. Paragraph **6.** under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph **1.b.** is replaced by the following:

b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or



- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
 - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions**.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph **b. Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. **ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. **WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

Paragraphs **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 6. **Representations**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 2. **Duties In The Event of Occurrence, Offense, Claim Or Suit**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of **Section II - Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V - Definitions**, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.